



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0569; FRL-10136-02-R4]

Air Plan Approval; TN; Updates to References to Appendix W Modeling Guideline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Tennessee on April 9, 2021. Specifically, EPA is approving updates to the incorporation by reference of Federal guidelines on air quality modeling in the Tennessee SIP. EPA is also converting the previous conditional approval regarding infrastructure SIP prevention of significant deterioration (PSD) elements for the 2015 ozone national ambient air quality standards (NAAQS) for Tennessee to a full approval. EPA is approving this revision pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2021-0569. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional

Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Josue Ortiz Borrero, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8085. Mr. Ortiz Borrero can also be reached via electronic mail at ortizborrero.josue@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements, such as requirements for monitoring, basic program requirements, and legal authority, that are designed to assure attainment and maintenance of the NAAQS. This type of SIP is commonly referred to as an “infrastructure SIP” or “iSIP.” States were required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.¹

On September 13, 2018, Tennessee met the requirement to submit an iSIP for the 2015 8-hour ozone NAAQS by the October 1, 2018, deadline. Through previous rulemakings, EPA

¹ In infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

approved most of the infrastructure SIP elements for the 2015 ozone NAAQS for Tennessee.^{2,3} However, regarding the PSD elements of section 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J) (herein referred to as element C, Prong 3, and element J, respectively), EPA conditionally approved⁴ these portions of Tennessee's iSIP submission because of outdated references to the Federal guidelines on air quality modeling found in appendix W of 40 CFR part 51.⁵ As previously mentioned, all other applicable iSIP requirements for Tennessee for the 2015 8-hour ozone NAAQS were addressed or will be addressed in separate rulemakings.

For elements C and J to be approved for PSD, a state needs to demonstrate that its SIP meets the PSD-related infrastructure requirements of these sections. These requirements are met if the state's implementation plan includes a PSD program that meets current Federal requirements. Prong 3 is also approvable when a state's implementation plan contains a fully approved, up-to-date PSD program. EPA's PSD regulations at 40 CFR 51.166(l) require that modeling be conducted in accordance with appendix W, *Guideline on Air Quality Models*. EPA promulgated the most current version of appendix W on January 17, 2017 (82 FR 5182). Therefore, for the iSIP PSD elements for the 2015 8-hour ozone NAAQS to be approved, the PSD regulations in the SIP must reference the most current version of appendix W.

As discussed in EPA's April 9, 2020, conditional approval of the 2015 ozone iSIP PSD elements for Tennessee, the State's SIP contained outdated references to appendix W. The State committed to updating the outdated references and submitting a SIP revision within one year of EPA's final rule conditionally approving these PSD elements. Accordingly, Tennessee was

² EPA approved most elements for Tennessee, except for the Interstate Transport provisions (Prongs 1 and 2), and the PSD provisions (element C, Prong 3, and J), on December 26, 2019. *See* 84 FR 70895.

³ The Interstate Transport provisions (Prongs 1 and 2) for Tennessee have been proposed for disapproval, but that action has not yet been finalized. *See* 87 FR 9545 (February 22, 2022).

⁴ Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval will be treated as a disapproval and EPA will issue a finding of disapproval.

⁵ For the State of Tennessee, EPA conditionally approved the PSD provisions of element C, Prong 3, and element J, on April 9, 2020. *See* 85 FR 19888.

required to submit a SIP revision by April 9, 2021. Tennessee met its commitment by submitting a SIP revision to correct the deficiencies before the deadline.

In a notice of proposed rulemaking (NPRM), published on August 24, 2022 (87 FR 51944), EPA proposed to approve changes to the Tennessee SIP and to convert the conditional approval to a full approval for Tennessee regarding element C, Prong 3, and element J, for the 2015 8-hour ozone NAAQS infrastructure SIP. The details of Tennessee's submission and the rationale for EPA's action are explained in the NPRM. Comments on the August 24, 2022, NPRM were due on or before September 23, 2022. EPA did not receive any comments on the August 24, 2022, NPRM.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference of Tennessee Rules 1200-03-09-.01, *Construction Permits*,⁶ and 1200-03-21-.01, *General Alternate Emission Standard*, state effective on April 22, 2021, which address outdated references to EPA's modeling guidelines in order to meet PSD iSIP requirements for the 2015 8-hour ozone NAAQS. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

III. Final Action

EPA is approving changes to the Tennessee SIP and converting the conditional approval

⁶ EPA is not incorporating the April 22, 2021, state effective version of the following provisions: 1200-03-09-.01(1)(a); 1200-03-09-.01(1)(d); 1200-03-09-.01(1)(j); 1200-03-09-.01(4)(b)24(XVII); 1200-03-09-.01(4)(b)29; 1200-03-09-.01(4)(b)47(i)(IV); 1200-03-09-.01(4)(j)3; 1200-03-09-.01(5)(b)1(x)(VII); the PM_{2.5} annual and 24-hour averaging time as part of subparagraph 1200-03-09-.01(5)(b)(1)(xix); and 1200-03-09-.01(5)(b)2(iii)(II).

In the August 24, 2022, NPRM, EPA also proposed to exclude 1200-03-09-.01(1)(h); 1200-03-09-.01(4)(a)7(vi); 1200-03-09-.01(4)(l)2(iii); 1200-03-09-.01(5)(b)2(viii)(III); and 1200-03-09-.01(5)(b)3(i)(III) from the incorporation of the April 22, 2021, state effective version. See 87 FR 51946. Subsequent to the NPRM, EPA finalized approval of the version of these five provisions found in the April 22, 2021, state effective rule (see 87 FR 59322, September 30, 2022) and incorporated them by reference. EPA is therefore not finalizing the exclusion of these provisions from the incorporation by reference of Rule 1200-03-09-.01 in this action.

for element C, Prong 3, and element J for the 2015 8-hour ozone Infrastructure SIP to a full approval. Specifically, EPA is approving changes to Tennessee Rules 1200-03-09-.01, *Construction Permits*, and 1200-03-21-.01, *General Alternate Emission Standard*.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Daniel Blackman,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR - Tennessee

§ 52.2219 [Removed and Reserved]

2. Remove and reserve § 52.2219.

3. In § 52.2220:

a. In paragraph (c), amend Table 1 by revising the entries for “Section 1200-3-9-.01” and “Section 1200-3-21-.01”.

b. In paragraph (e), amend the table by adding at the end an entry for “110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS”.

The revisions and addition read as follows:

§ 52.2220 Identification of plan.

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(c) * * *

Table 1 - EPA Approved Tennessee Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*

Section 1200-3-9-.01	Construction Permits	4/22/2021	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Except for 1200-03-09-.01(1)(a), (1)(d), (4)(b)24(i)(XVII), (4)(b)29, (4)(b)47(i)(IV), (4)(j)3, (5)(b)1(x)(VII), and (5)(b)2(iii)(II), which have a state effective date of 4/24/2013; 1200-3-9-.01(1)(j), which is not incorporated into the SIP; and the PM _{2.5} SILs (found in 1200-3-9-.01(5)(b)1(xix)) and the SMC (found in 1200-3-9-.01(4)(d)6(i)(III)) provisions.
**	**	*	*	*
Section 1200-3-21-.01	General Alternate Emission Standard	4/22/2021	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
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(e) * * *

EPA-Approved Tennessee Non-Regulatory Provisions

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
**	**	*	*	*

110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS	Tennessee	4/9/2021	[Insert date of publication in Federal Register], [Insert citation of publication]	Addressing the PSD requirements of Section 110(a)(2)(C), (D)(i)(II) (Prong 3), and (J).
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[FR Doc. 2022-22357 Filed: 10/21/2022 8:45 am; Publication Date: 10/24/2022]